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C O N F I D E N T I A L LA PAZ 001866

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PLEASE PASS TO US OAS

E.O. 12958: DECL: 09/02/2018
TAGS: PGOV PREL ASEC KDEM BL
SUBJECT: EVO PLANS REELECTION, CLASHES WITH ELECTORAL COURT

REF: LA PAZ 1865

Classified By: EcoPol Chief Mike Hammer for reasons 1.4 b,d

¶1. (C) Summary: On September 1, the National Electoral Court made public a series of interpretive letters that challenged President Evo Morales' supreme decrees of August 28. The National Court demanded laws (through congress) to call for the referendum on the Movement Toward Socialism (MAS) constitution and to elect subprefects and departmental advisors. The National Court also stated that it will require the full 120 days permitted by law to arrange referenda to replace the two prefects recalled on August 10 (La Paz and Cochabamba), instead of the 102 days that the supreme decree allowed. The National Electoral Court also reminded Chuquisaca Prefect Savina Cuellar that she does not have the authority to call for an autonomy referendum, as she recently did, and chided the Santa Cruz Departmental Electoral Court for allowing Santa Cruz Prefect Ruben Costas to call for departmental elections. Although the current Bolivian constitution grants the National Electoral Court final say on all matters regarding elections, the central government was quick to contradict the National Electoral Court, saying that the supreme decrees were legal in calling for the various referenda and elections on December 7. Acting-President Garcia Linera, speaking for President Evo Morales was abroad in Iran, declared that after the MAS constitution is approved by referendum on December 7, there will be nationwide elections for the President, Vice President, and members of congress in 2009. End summary.

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National Electoral Court Surprise
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¶2. (C) Although the President of the National Electoral Court, Jose Luis Exeni, was appointed by President Evo Morales, this is the third time he has made a legal determination seemingly against MAS interests and been swiftly rejected by the executive branch and the MAS. In March 2008, Exeni issued a ruling that a constitutional

referendum scheduled for May 4 by congressional legislation could not go forward as scheduled, citing the lack of 120 days to organize the election. Before the August 10 recall referenda, Exeni issued another declaration modifying the rules for the recall of the prefects, a rule which eventually the MAS accepted (because it protected the MAS prefect of Oruro) but which was initially rejected by Evo and the MAS. Exeni's September 1 decision, in which the National Electoral Court declared it would not go ahead with the referendum on the MAS constitution without a law from Congress, is apparently another "unexpected" strike at Evo and the MAS from a MAS-appointed official. (Note: Exeni and the National Electoral Court also emitted a decision that election of subprefects and departmental advisors would require a modification of existing law, thus necessitating congressional involvement. End note.)

¶13. (SBU) Legal Defense Minister Hector Arce responded publicly that the National Electoral Court's published letters did not have legal standing. "The communication that the National Electoral Court sent to acting-President Alvaro Garcia Linera is not a judicial document, it does not generate any related effect and cannot--although it tries to--suspend the execution of the elective acts and referenda legally and legitimately convoked by the President of the Republic Evo Morales Ayma for the day of December 7," Arce declared.

¶14. (C) However, former Minister of Justice Bernardo Wayar told Emboff September 2 that in his opinion, "Exeni would not have done this without prior government approval." In Wayar's view, Exeni's announcement and the subsequent rejection by the executive branch allow Evo and his ministers to buy time and get a feel for public sentiment. "It also puts the pressure on the legislative branch," Wayar suggested, explaining that if a rule from congress is deemed necessary, the MAS can mobilize its social organizations to besiege congress again, and the opposition-controlled senate will be blamed for thwarting "the will of the people" if a law is not passed. As a well-respected lawyer, the former Minister of Justice also added that Exeni and the National Electoral Court had to decide as they did, because existing Bolivian law in fact makes Evo's decrees illegal. Pointing out that numerous judicial appointments are currently pending, Wayar suggested that the executive branch may welcome the current confusion as a distraction as they negotiate within their ranks to nominate new judges. Finally, Wayar opined that since the opposition departments' Departmental Electoral Courts had already begun to reject Evo's decrees, this action on the part of the National Electoral Court allows for the possibility of negotiation with the Departmental Electoral Courts to allow the referendum on the constitution to go forward.

¶15. (C) A Peruvian diplomat told Emboff that in a discussion with MAS Senator Antonio Peredo before Exeni's announcement, Peredo confided that MAS leadership was coming to realize that "the decrees went too far." Peredo said that the MAS was determined to find a way to go ahead with the referendum on the MAS constitution and with the elections, but that they needed a way around the opposition departments' objections, since the MAS wants to avoid a referendum that takes place only in MAS departments.

Chance for OAS to Review Voter Lists and Delay Referendum

¶16. (C) At a meeting of foreign diplomats (French, Peruvian, Brazilian, Swedish, Argentine, Dutch, German, Danish, and U.S. DCMs and political counselors) attendees agreed that regardless of National Electoral Court President Exeni's loyalties, his public request for "UN, OAS, or EU" experts to review Bolivia's voter rolls provides an opening for international involvement. If, for example, the OAS takes Exeni up on this request, it would almost certainly delay the referenda, thereby providing time for yet another attempt at dialogue. Some diplomats also noted that a review of the

voter rolls could serve to highlight problems with the August 10 recall referenda, also. Speaking for the EU, the French diplomat present said that they have not received a formal request, but would provide Exeni with names of "independent" EU experts. The French diplomat added that, short of an official request from the National Electoral Court, the EU would not pursue this opening any further. Most diplomats present agreed that no official request is likely, however, since Evo and the MAS will doubtless block any attempt to review the voter lists for fraud given that such a review could call into question Evo's resounding victory after Evo's August 10 victory or delay the crucial vote for the MAS constitution.

OAS Weighs In Before Legal Questions Addressed

¶ 17. (C) Two days before the National Electoral Court released its decisions requiring laws from congress to convolve elections and rejecting Evo's extra-legal use of decrees, the OAS announced that it would send observers for the December elections. According to Bolivian press, General Secretary Insulza expressed his complete trust in Bolivian democracy and pledged to send observers for the elections which Evo had called by decree. Insulza also opined that "understanding is the only way out for Bolivia, not only to approve the constitution, not only to put limits on inequalities, but also to be able to do it in peace and harmony." The OAS press-release of August 29 added, "This is a government that is disposed, as President Evo Morales said, to settle issues with ballots rather than bullets. All who wish to vote will vote, all who wish to express their opinion will express it."

Opposition Groups Continue to Reject Decrees

¶ 18. (C) Despite Insulza's optimistic hopes for peace and understanding, the opposition departments of the eastern media luna announced civil resistance measures to protest Evo's use of decrees to circumvent congress and the opposition. Chuquisaca Prefect Savina Cuellar called for an autonomy referendum for November 30 while Chuquisaca civic groups announced that they would boycott the December 7 elections. In Santa Cruz on August 29, a violent confrontation between MAS sympathizers and radical crucenos left seven injured (reftel). CONALDE, the grouping of opposition department officials and civic leaders, has called an emergency meeting for September 2 to define measures of civil disobedience to confront the December 7 elections, which they believe were illegally called by decree. CONALDE also views the MAS constitution itself as illegal, since it was approved without opposition participation and was not written according to the rules of the Constituent Assembly. CONALDE is also still demanding return of the IDH hydrocarbon tax revenues.

Ready or Not, Here Evo Stays

¶ 19. (C) While the Electoral Courts and Legal Defense Minister Arce square off over the details of the upcoming referendum and elections, acting-President Garcia Linera has his eyes on the prize: re-election of Evo and himself for up to ten more years. If the MAS constitution is approved, Garcia Linera stated that they would seek to hold new elections in 2009: "...this will be the first renovation process, convoking general elections for the president, vice-president, and congress members." Under article 169 of the most-recently-available version of the MAS constitution, presidential terms are limited to five years and a president may be re-elected only once. Evo and the MAS have always maintained that Evo could have two more five-year terms, based on the fact that his first election under the new MAS constitution would not be a "re-election."

